FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Family Court Appeal No.140 of 2004

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.A.R.Pitale for appellant.
Mr.R.S.Raymond i/by M/s.Raymond & Co. for respondent No.1.

CORAM : H.L GOKHALE &
R.S.MOHITE, JJ.
DATED : 22nd December 2004

P.C. :

1. Heard Mr.Pitale for the appellant. Mr.Raymond appears for respondent No.1. Respondent No.2 is a formal party. Copy of the appeal is already served on respondent No.2-State of Maharashtra through the Government Pleader.

2. This appeal seeks to challenge the order dated 14th September 2004 passed by the learned Principal Judge, Family Court, Mumbai, on M.J.Petition No.A-140 of 2004 filed by respondent No.1-wife, seeking

divorce under Sections 13(1)(ia) and 13(3) of the Hindu Marriage Act. The Family Court allowed that petition for the reason that the written statement was not filed by the appellant-husband herein within the stipulated time provided for filing the same. Since this is a matter concerning the family life of the parties, we are of the view that the parties must get a proper opportunity to represent their case before the Court to the extent possible.

3. Mr.Pitale, learned Counsel appearing for the appellant, points out that the appellant was in custody in view of a complaint under Section 498A filed by respondent No.1-wife and that was one of the reasons that there was a delay in filing the written statement. In any case, he has prepared the written statement and handed over a true copy thereof to

Mr.Raymond appearing for respondent No.1-wife in this appeal. We have also taken a true copy of this written statement on record. Mr.Pitale states that the appellant should be permitted to file the written statement in the Family Court and to defend the matter on merits.

4. Mr.Raymond appearing for respondent No.1 leaves it to the Court to pass appropriate orders. He, however, insists on costs being paid for restoration of the proceedings.

5. In the circumstances noted above, we admit the appeal. We have heard the Counsel appearing for both the parties and noted their submissions. As stated above, we are of the view that the parties in the matrimonial matter should get an opportunity to represent their case before the

Family Court to the extent possible and, therefore, we set aside the order dated 14th September 2004 passed by the learned Principal Judge, Family Court, Mumbai, granting a decree for want of written statement. Petition No.A-140 of 2004 will stand restored to the file of the Family Court, Mumbai.

6. Mr.Pitale, learned Counsel appearing for the appellant, states that the written statement will be filed within two weeks from today in the Family Court, Mumbai. We award the costs of Rs.5,000/- to respondent No.1-wife for restoration of Petition No.A-140 of 2004 as well as of this Family Court Appeal together. Mr.Pitale has handed over a cheque for Rs.5,000/- to Mr.Raymond, who has received it on behalf of respondent No.1-wife in Court.

7. The appeal is allowed in the aforesaid terms with costs as stated above.

8. We add that in spite of giving this liberty, if the appellant fails to file the written statement within two weeks from today, the order passed by the Family Court, Mumbai, will remain as it is.

9. In view of the disposal of the appeal, nothing survives in Civil Application No.191 of 2004 and the same stands disposed of as infructuous.

(H.L.GOKHALE, J.)

(R.S.MOHITE, J.)